

HOUSE SUBSTITUTE  
FOR  
SENATE BILL NO. 932  
AN ACT

2 To repeal sections 287.020, 287.067, 287.800,  
3 and 288.060, RSMo, and to enact in lieu  
4 thereof four new sections relating to  
5 employment.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
7 AS FOLLOWS:

8 Section A. Sections 287.020, 287.067, 287.800, and 288.060,  
9 RSMo, is repealed and four new sections enacted in lieu thereof,  
10 to be known as sections 287.020, 287.067, 287.800, and 288.060,  
11 to read as follows:

12 287.020. 1. The word "employee" as used in this chapter  
13 shall be construed to mean every person in the service of any  
14 employer, as defined in this chapter, under any contract of hire,  
15 express or implied, oral or written, or under any appointment or  
16 election, including executive officers of corporations. Any  
17 reference to any employee who has been injured shall, when the  
18 employee is dead, also include his dependents, and other persons  
19 to whom compensation may be payable. The word "employee" shall  
20 also include all minors who work for an employer, whether or not  
21 such minors are employed in violation of law, and all such minors  
22 are hereby made of full age for all purposes under, in connection

1 with, or arising out of this chapter. The word "employee" shall  
2 not include an individual who is the owner and operator of a  
3 motor vehicle which is leased or contracted with a driver to a  
4 for-hire common or contract motor vehicle carrier operating  
5 within a commercial zone as defined in section 390.020 or  
6 390.041, RSMo, or operating under a certificate issued by the  
7 motor carrier and railroad safety division of the department of  
8 economic development or by the interstate commerce commission.

9 2. (1) The word "accident" as used in this chapter shall,  
10 unless a different meaning is clearly indicated by the context,  
11 [be construed to] mean an unexpected or unforeseen identifiable  
12 event or series of events happening suddenly and violently, with  
13 or without human fault, and producing at the time objective  
14 symptoms of an injury immediately resulting from the specific  
15 event or series of events. For purposes of this chapter, any  
16 event or series of events shall be identifiable by their time and  
17 place of occurrence. An injury is compensable if it is clearly  
18 work related. An injury is clearly work related if work was [a  
19 substantial] the prevailing factor in the cause of the resulting  
20 medical condition or disability. An injury is not compensable  
21 merely because work was a triggering or precipitating factor.

22 (2) "Prevailing factor" shall mean the accident is the  
23 primary factor in relation to any other factors, such that when  
24 compared to the other factors individually and not collectively,  
25 the accident has a greater effect than any of the other factors

1     on the resulting medical condition or disability.

2           3. (1) In this chapter the term "injury" is hereby defined  
3     to be an injury which has arisen out of and in the course of  
4     employment. The injury must be incidental to and not independent  
5     of the relation of employer and employee. An injury by accident  
6     shall be compensable only if the accident was the prevailing  
7     factor in causing the resulting medical condition. Ordinary,  
8     gradual deterioration or progressive degeneration of the body  
9     caused by aging shall not be compensable, except where the  
10    deterioration or degeneration follows as an incident of  
11    employment.

12           (2) An injury shall be deemed to arise out of and in the  
13    course of the employment only if all of the following criteria  
14    are met:

15           (a) It is reasonably apparent, upon consideration of all  
16    the circumstances, that the [employment] accident is [a  
17    substantial] the prevailing factor in causing the injury; and

18           (b) [It can be seen to have followed as a natural incident  
19    of the work; and

20           (c) It can be fairly traced to the employment as a  
21    proximate cause; and

22           (d)] It does not come from a hazard or risk unrelated to  
23    the employment to which workers would have been equally exposed  
24    outside of and unrelated to the employment in normal  
25    nonemployment life; and

1        (c) The injury is demonstrated and certified by a physician  
2        using medical evidence based only on objective relevant medical  
3        findings; and

4        (d) The circumstances of the claimant's employment created  
5        an increased risk or hazard which resulted in the injury.

6        (3) The terms "injury" and "personal injuries" shall mean  
7        violence to the physical structure of the body and to the  
8        personal property which is used to make up the physical structure  
9        of the body, such as artificial dentures, artificial limbs, glass  
10       eyes, eyeglasses, and other prostheses which are placed in or on  
11       the body to replace the physical structure and such disease or  
12       infection as naturally results therefrom. These terms shall in  
13       no case except as specifically provided in this chapter be  
14       construed to include occupational disease in any form, nor shall  
15       they be construed to include any contagious or infectious disease  
16       contracted during the course of the employment, nor shall they  
17       include death due to natural causes occurring while the worker is  
18       at work.

19       4. Missouri does not apply or follow the positional risk  
20       analysis, positional risk doctrine, or positional risk rule. The  
21       positional risk doctrine is not to be followed under this chapter  
22       and any holding or statement of a judicial opinion or award which  
23       recognizes and purportedly follows this rule is hereby abrogated.

24       5. This chapter shall not apply to personal health  
25       conditions of an employee which manifest themselves in the

1     employment in which an accident is not the prevailing factor in  
2     the resulting need for medical treatment.

3           [4.] 6. "Death" when mentioned as a basis for the right to  
4     compensation means only death resulting from such violence and  
5     its resultant effects occurring within three hundred weeks after  
6     the accident; except that in cases of occupational disease, the  
7     limitation of three hundred weeks shall not be applicable.

8           [5.] 7. Without otherwise affecting either the meaning or  
9     interpretation of the abridged clause, "personal injuries arising  
10    out of and in the course of such employment", it is hereby  
11    declared not to cover workers except while engaged in or about  
12    the premises where their duties are being performed, or where  
13    their services require their presence as a part of such service.

14          [6.] 8. A person who is employed by the same employer for  
15    more than five and one-half consecutive work days shall for the  
16    purpose of this chapter be considered an "employee".

17          [7.] 9. The term "total disability" as used in this chapter  
18    shall mean inability to return to any employment and not merely  
19    mean inability to return to the employment in which the employee  
20    was engaged at the time of the accident.

21          [8.] 10. As used in this chapter and all acts amendatory  
22    thereof, the term "commission" shall hereafter be construed as  
23    meaning and referring exclusively to the labor and industrial  
24    relations commission of Missouri, and the term "director" shall  
25    hereafter be construed as meaning the director of the department

1 of insurance of the state of Missouri or such agency of  
2 government as shall exercise the powers and duties now conferred  
3 and imposed upon the department of insurance of the state of  
4 Missouri.

5 [9.] 11. The term "division" as used in this chapter means  
6 the division of workers' compensation of the department of labor  
7 and industrial relations of the state of Missouri.

8 [10.] 12. For the purposes of this chapter, the term  
9 "minor" means a person who has not attained the age of eighteen  
10 years; except that, for the purpose of computing the compensation  
11 provided for in this chapter, the provisions of section 287.250  
12 shall control.

13 13. In applying provisions of this chapter, it is the  
14 intent of the legislature to reject and abrogate earlier case law  
15 interpretations of cases "arising out of" and "in the course of  
16 the employment", to include, but not be limited to, holdings in  
17 cases such as *Bennett v. Columbia Health Care and Rehabilitation,*  
18 80 S.W.3d 524 (Mo.App. W.D. 2002); *Kasl v. Bristol Care, Inc.,*  
19 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA,* 984 S.W.2d 512  
20 (Mo.banc 1999).

21 287.067. 1. In this chapter the term "occupational  
22 disease" is hereby defined to mean, unless a different meaning is  
23 clearly indicated by the context, an identifiable disease arising  
24 with or without human fault out of and in the course of the  
25 employment. Ordinary diseases of life to which the general

1 public is exposed outside of the employment shall not be  
2 compensable, except where the diseases follow as an incident of  
3 an occupational disease as defined in this section. The disease  
4 need not to have been foreseen or expected but after its  
5 contraction it must appear to have had its origin in a risk  
6 connected with the employment and to have flowed from that source  
7 as a rational consequence. "Occupational disease" means only a  
8 disease for which there are epidemiological studies showing that  
9 exposure to the specific substance involved, at the levels to  
10 which the employee was exposed, may cause the precise disease  
11 sustained by the employee.

12 2. An occupational disease is compensable only if [it is  
13 clearly work related and meets the requirements of an injury  
14 which is compensable as provided in subsections 2 and 3 of  
15 section 287.020. An occupational disease is not compensable  
16 merely because work was a triggering or precipitating factor] the  
17 occupational exposure was the prevailing factor in causing the  
18 resulting medical condition.

19 (1) Ordinary, gradual deterioration, or progressive  
20 degeneration of the body caused by aging shall not be  
21 compensable.

22 (2) "Prevailing factor" shall mean the occupational  
23 exposure is the primary factor in relation to any other factors,  
24 such that when compared to the other factors individually and not  
25 collectively, the accident has a greater effect than any of the

1 other factors on the resulting medical condition or disability.

2 (3) The occupational exposure must be demonstrated and  
3 certified by a physician only using medical evidence based on  
4 objective relevant medical findings.

5 3. An occupational disease or occupational exposure injury  
6 shall be deemed to rise out of and in the course of the  
7 employment only if all of the following increased risks are met:

8 (1) It is reasonably apparent upon consideration of all the  
9 circumstances that the occupational disease is the prevailing  
10 factor in causing the injury; and

11 (2) It does not come from a hazard or risk unrelated to the  
12 employment to which workers would have been equally exposed  
13 outside of and unrelated to the employment in normal  
14 nonemployment life; and

15 (3) The injury is demonstrated and certified by a physician  
16 only using medical evidence based on objective relevant medical  
17 findings; and

18 (4) If the circumstances of the claimant's employment led  
19 to an increase in the risk or hazard which resulted in the  
20 injury.

21 4. Missouri does not apply or follow the positional risk  
22 analysis, positional risk doctrine, or positional risk rule. The  
23 positional risk doctrine is not to be followed under this chapter  
24 and any holding or statement of a judicial opinion or award which  
25 recognizes and purportedly follows this rule is hereby abrogated.



1           5. "Loss of hearing due to industrial noise" is recognized  
2 as an occupational disease for purposes of this chapter and is  
3 hereby defined to be a loss of hearing in one or both ears due to  
4 prolonged exposure to harmful noise in employment. "Harmful  
5 noise" means sound capable of producing occupational deafness.

6           [4.] 6. "Radiation disability" is recognized as an  
7 occupational disease for purposes of this chapter and is hereby  
8 defined to be that disability due to radioactive properties or  
9 substances or to Roentgen rays (X rays) or exposure to ionizing  
10 radiation caused by any process involving the use of or direct  
11 contact with radium or radioactive properties or substances or  
12 the use of or direct exposure to Roentgen rays (X rays) or  
13 ionizing radiation.

14           [5.] 7. Disease of the lungs or respiratory tract,  
15 hypotension, hypertension, or disease of the heart or  
16 cardiovascular system, including carcinoma, may be recognized as  
17 occupational diseases for the purposes of this chapter and are  
18 defined to be disability due to exposure to smoke, gases,  
19 carcinogens, inadequate oxygen, or psychological stress of  
20 firefighters of a paid fire department if a direct causal  
21 relationship is established.

22           [6.] 8. Any employee who is exposed to and contracts any  
23 contagious or communicable disease arising out of and in the  
24 course of his or her employment shall be eligible for benefits  
25 under this chapter as an occupational disease.

1           [7.] 9. With regard to occupational disease due to  
2       repetitive motion, if the exposure to the repetitive motion which  
3       is found to be the cause of the injury is for a period of less  
4       than three months and the evidence demonstrates that the exposure  
5       to the repetitive motion with a prior employer was the  
6       [substantial contributing] prevailing factor [to] in causing the  
7       injury, the prior employer shall be liable for such occupational  
8       disease.

9           287.800. All of the provisions of this chapter shall be  
10      [liberally] impartially construed to their plain meaning with a  
11      view to the public welfare[, and a substantial compliance  
12      therewith shall be sufficient to give effect to rules,  
13      regulations, requirements, awards, orders or decisions of the  
14      division and the commission, and they shall not be declared  
15      inoperative, illegal or void for any omission of a technical  
16      nature in respect thereto]. The labor and industrial relations  
17      commission and all officials within the division of workers'  
18      compensation shall apply an impartial standard of review when  
19      weighing evidence and resolving factual conflicts.

20           288.060. 1. All benefits shall be paid through employment  
21      offices in accordance with such regulations as the division may  
22      prescribe.

23           2. Each eligible insured worker who is totally unemployed  
24      in any week shall be paid for such week a sum equal to his weekly  
25      benefit amount.

1           3. Each eligible insured worker who is partially unemployed  
2 in any week shall be paid for such week a partial benefit. Such  
3 partial benefit shall be an amount equal to the difference  
4 between his weekly benefit amount and that part of his wages for  
5 such week in excess of twenty dollars, and, if such partial  
6 benefit amount is not a multiple of one dollar, such amount shall  
7 be reduced to the nearest lower full dollar amount. Termination  
8 pay, severance pay or pay received by an eligible insured worker  
9 who is a member of the organized militia for training or duty  
10 authorized by section 502(a)(1) of Title 32, United States Code[,  
11 or who is an elected official] shall not be considered wages for  
12 the purpose of this subsection.

13           4. The division shall compute the wage credits for each  
14 individual by crediting him with the wages paid to him for  
15 insured work during each quarter of his base period or twenty-six  
16 times his weekly benefit amount, whichever is the lesser. In  
17 addition, if a claimant receives wages in the form of termination  
18 pay or severance pay and such payment appears in a base period  
19 established by the filing of an initial claim, the claimant may,  
20 at his option, choose to have such payment included in the  
21 calendar quarter in which it was paid or choose to have it  
22 prorated equally among the quarters comprising the base period of  
23 the claim. The maximum total amount of benefits payable to any  
24 insured worker during any benefit year shall not exceed  
25 twenty-six times his weekly benefit amount, or thirty-three and

1 one-third percent of his wage credits, whichever is the lesser.  
2 For the purpose of this section, wages shall be counted as wage  
3 credits for any benefit year, only if such benefit year begins  
4 subsequent to the date on which the employing unit by whom such  
5 wages were paid has become an employer. The wage credits of an  
6 individual earned during the period commencing with the end of a  
7 prior base period and ending on the date on which he filed an  
8 allowed initial claim shall not be available for benefit purposes  
9 in a subsequent benefit year unless, in addition thereto, such  
10 individual has subsequently earned either wages for insured work  
11 in an amount equal to at least five times his current weekly  
12 benefit amount or wages in an amount equal to at least ten times  
13 his current weekly benefit amount.

14 5. In the event that benefits are due a deceased person and  
15 no petition has been filed for the probate of the will or for the  
16 administration of the estate of such person within thirty days  
17 after his death, the division may by regulation provide for the  
18 payment of such benefits to such person or persons as the  
19 division finds entitled thereto and every such payment shall be a  
20 valid payment to the same extent as if made to the legal  
21 representatives of the deceased.

22 6. The division is authorized to cancel any benefit warrant  
23 remaining outstanding and unpaid one year after the date of its  
24 issuance and there shall be no liability for the payment of any  
25 such benefit warrant thereafter.

1           7. The division may establish an electronic funds transfer  
2 system to transfer directly to claimants' accounts in financial  
3 institutions benefits payable to them pursuant to this chapter.  
4 To receive benefits by electronic funds transfer, a claimant  
5 shall satisfactorily complete a direct deposit application form  
6 authorizing the division to deposit benefit payments into a  
7 designated checking or savings account. Any electronic funds  
8 transfer system created pursuant to this subsection shall be  
9 administered in accordance with regulations prescribed by the  
10 division.

11           8. The division may issue a benefit warrant covering more  
12 than one week of benefits.